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6	UNITED STATES DISTRICT COURT		
7	FOR THE EASTERN DISTRICT OF CALIFORNIA		
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9	G. DANIEL WALKER,	No. 2:17-cv-1764 KJM DB P	
10	Plaintiff,		
11	v.	FINDINGS AND RECOMMENDATIONS	
12	SCOTT KERNAN, et al.,		
13	Defendants.		
14			
15	Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights		
16	action pursuant to 42 U.S.C. § 1983. Plaintiff claims defendants conspired to retaliate against		
17	him because he named them as defendants in lawsuits. Presently before the court is plaintiff's		
18	notice of voluntary dismissal. (ECF No. 71.)		
19	"Rule 41(a)(2) provides that after a defendant has filed an answer, a plaintiff may		
20	voluntarily dismiss a claim only upon an order of the court." U.S. ex rel Stone v. Rockwell		
21	Intern. Corp., 282 F.3d 787, 810 (10th Cir. 2002) (citing Ohlander v. Larson, 114 F.3d 1531,		
22	1536-37 (10th Cir. 1997)). The rule further provides that "[u]nless otherwise specified in the		
23	order, a dismissal under this paragraph is without prejudice." Fed. R .Civ. P. 41(a)(2). The court		
24	should ordinarily grant a motion for voluntary dismissal under Rule 41(a)(2), unless it will		
25	prejudice a defendant. Ohlander, 114 F.3d at 1537. Defendants ¹ Green, Kumar, Martello, and		
26			
27	¹ The undersigned recommended that the remaining defendants be dismissed on screening the second amended complaint. (ECF No. 28.) Those findings and recommendations remain		
28	pending before the district court.		

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l	Muniz have indicated that they do not oppose dismissal.	(ECF No. 72.)	Thus, the court w	ill
2	recommend that this action be dismissed.			

3 Accordingly, IT IS HEREBY RECOMMENDED that: 4 Plaintiff's rule 41 motion for voluntary dismissal (ECF No. 71) be granted; 1. 5 2. This action is dismissed without prejudice. 6 These findings and recommendations are submitted to the United States District Judge 7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within twenty days after 8 being served with these findings and recommendations, any party may file written objections with 9 the court and serve a copy on all parties. Such a document should be captioned "Objections to 10 Magistrate Judge's Findings and Recommendations." Any response to the objections shall be filed 11 and served within fourteen days after service of the objections. The parties are advised that failure 12 to file objections within the specified time may waive the right to appeal the District Court's 13 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). 14 Dated: July 28, 2021 15 16 AH BARNES 17 UNITED STATES MAGISTRATE JUDGE 18 19 20 21 DLB:12 DB/DB Prisoner Inbox/Civil.Rights/R/walk1764.vol.dism 22 23 24 25 26 27 28